

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA CASEY CARTER,

Plaintiff,

No. CIV S-08-0125 JAM EFB P

vs.

ROBERT SILLEN, et al.,

Defendants.

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff, a state prisoner, was proceeding pro se, and apparently attempting to file a civil rights action under 42 U.S.C. § 1983. Rather than filing a complaint, however, plaintiff filed a motion for a preliminary injunction. On October 10, 2008, the court advised plaintiff that if he wished to proceed with his claims in a civil rights action, he must file a complaint. Additionally, the court found that his motion for a preliminary injunction was moot and recommended that it be denied. On October 27, 2008, mail addressed to plaintiff was returned as undeliverable for the stated reason that plaintiff was deceased.

Federal courts have jurisdiction to hear cases and controversies. U.S. CONST. art. III, § 2. The issues must remain live throughout all stages of the proceeding. *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-78 (1990). An action becomes moot when the issues are no longer live, *i.e.*, when the parties lack a legally cognizable interest in the outcome. *Powell v.*

1 *McCormack*, 395 U.S. 486, 496 (1969). In this case, no complaint was ever filed and plaintiff's  
2 request for injunctive relief is now rendered moot by his death. There are no claims in this  
3 action that can be transferred and thus, no party can be substituted for plaintiff. *See* Fed. R. Civ.  
4 P. 25(a).

5 Accordingly, it is hereby ORDERED that the findings and recommendations portion of  
6 the court's October 10, 2008 order and findings and recommendations is vacated.

7 Further, it is hereby RECOMMENDED that this action be dismissed on the grounds that  
8 plaintiff's death renders this case moot.

9 These findings and recommendations are submitted to the United States District Judge  
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after  
11 being served with these findings and recommendations, any party may file written objections with  
12 the court and serve a copy on all parties. Such a document should be captioned "Objections to  
13 Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified  
14 time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455  
15 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

16 Dated: March 23, 2009.

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18 EDMUND F. BRENNAN  
19 UNITED STATES MAGISTRATE JUDGE  
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